

# **Marion Circuit and Superior Court**

## **Civil Rules**

## **MARION CIRCUIT AND SUPERIOR COURT**

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**MARION CIRCUIT AND SUPERIOR COURT**  
**CIVIL DIVISION RULES**

**LR49-TR3-200. RANDOM FILING OF CASES**

All civil cases filed with the Marion County Clerk's Office for the Marion Superior Court shall be assigned to an individual courtroom on a random basis. The process for the random assignment shall be done through the Court and Clerk's automated case management system. The random assignment rule for civil cases does not apply to cases designated by statute or rule as being required to be filed in certain named Courts.

**LR49-TR3.1-201. ~~WITHDRAWAL.~~ WITHDRAWAL OF APPEARANCE**

All withdrawals of appearances shall be in writing and by leave of Court. Permission to withdraw shall be given only after the withdrawing attorney has given his client ten ~~(10)~~ days written notice of his intention to withdraw, ~~and~~ has filed a copy of such with the Court; and has provided the Court with the party's last known address; or upon a simultaneous entering of appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate,

and other pertinent information such as trial setting date or any other hearing date. The Court will not grant a request for withdrawal of appearance unless the same has been filed with the Court at least ten ~~(10)~~ days prior to trial date, except for good cause shown.

**LR49-TR4.12-202. ATTACHMENT. ATTACHMENT: SERVICE BY SHERIFF**

**A. Attachment-Duties of Sheriff.** Unless otherwise directed by the Judge, when a body attachment is signed by the Judge and taken to the Civil Sheriff's Office, the Civil Sheriff's Office will issue a letter to the party concerned requesting that he appear voluntarily at said office. If no response is made to this letter by the judgment defendant within ~~thirty (30)~~ days, the Civil Sheriff shall then execute said body attachment and bring the defendant into court during court hours.

If the Civil Sheriff is not successful in attaching the individual in question after ~~sixty (60)~~ more days, a total of ~~ninety (90)~~ days, he shall return the attachment to the appropriate court with a return that service cannot be made.

The plaintiff's attorney will be duly informed of the return of the attachment and he may then proceed to request that the Court place a bond upon the judgment defendant; such a bond may be fixed within the discretion of the Court if the Court finds that the defendant has actual knowledge of the attachment, is deliberately evading process of service, ~~and-or~~ such other matters as may convince the Court that a bond would be desirable under the circumstances and in the situation involved. If a new attachment is issued with bond fixed thereon, the Sheriff's Office will once again make an attempt to pick up the judgment defendant at the address indicated, and if picked up outside of court hours, he will be taken to the jail and required to post the amount of bond indicated to guarantee his appearance in court. Upon posting of the bond, he will be released with the admonition to appear in the appropriate court on the next court day during court hours. If, in an additional ~~thirty (30)~~ days, the Sheriff is again unable to obtain good service on the judgment defendant, the attachment will be returned to the appropriate court for disposition.

**B. Attachments-Hearings.** When a judgment defendant has been brought into court on a body attachment, a hearing will be conducted at the earliest convenience of the Court. Counsel for the plaintiff will respond to the telephone request by court personnel to appear at the hearing forthwith, and counsel will have deemed to consent to such notice to appear by requesting a body attachment. The hearing requires the presence of the attorney of record, and clerical or secretarial personnel shall not appear to interrogate the attached judgment defendant. Failure to respond promptly to such request may result in the discharge of the attached defendant or other appropriate measures by the Court.

**LR49-TR5-203. REQUIREMENTS FOR MOTIONS**

**A. Notice.** When a motion requires notice, the serving of the copy of the motion upon the other parties in the cause shall constitute notice of filing. If the motion requires a hearing or oral argument, the Court shall set the time and place of hearing or argument on the motion. Except for initial motions made pursuant to subsection D herein, all motions filed with the court shall include a brief statement indicating whether opposing party(ies) object to or approve of the granting of said motion.

**B. Response.** If the statement regarding the position of the opposing party(ies) required under subsection A herein indicates that objection to the granting of said motion may ensue, said objecting a party shall have ~~fifteen (15)~~ days from the date of filing to file a response to said motion.

**C. Oral Arguments on Motions and Other Pleadings.** When an oral argument is requested, the request shall be by separate instrument and filed with the pleading to be argued. Any such oral argument requested may be heard ~~only~~ at the discretion of the Court, except for motions for summary judgment which shall be set for hearing upon request of any party. This rule shall not apply to a hearing on Motion

for Summary Judgment.

**D. Enlargement of Time.** Initial written motion for enlargement of time pursuant to Rule TR 6(B)(1) to respond to a claim shall be automatically allowed for an additional ~~thirty (30)~~ days from the original due date without a written order of the Court. Any motion filed pursuant to this rule shall state the date when such a response is due and the date to which time is enlarged. The motion must be filed on or before the original due date or this rule shall be inapplicable. All subsequent Motions shall be so designated and will be granted only for good cause shown.

**E. Tender of Orders.** All motions seeking an order of the Court shall be accompanied by a sufficient number of orders to be executed by the Court in granting said motion. In addition to the orders, the notice shall be accompanied by stamped, addressed envelopes to all parties of record.

#### **LR49-TR8-204. PREPARATION OF PLEADINGS, MOTIONS AND OTHER PAPERS**

All pleadings, motions and other papers shall be prepared in accordance with the provisions of the Indiana Rules of Procedure. For the purpose of uniformity and convenience, the following requirements shall also be observed.

**A. Production.** Pleadings, motions and other papers may be either printed or typewritten on white opaque paper of at least ~~sixteen (16)~~ pound weight, ~~eight and one half (8-1/2)~~ inches wide and ~~eleven (11)~~ inches in length. All copies shall likewise be on white paper of sufficient strength and durability to resist normal wear and tear. If typewritten, the lines shall be double spaced, except for quotations, which shall be indented and single spaced. Script type shall not be used.

**B. Caption.** Every pleading shall contain a caption setting forth the name of the Court, the Division and Room Number, the title of the action and the file number.

**C. Titles.** Titles on all pleadings shall delineate each topic included in the pleading e.g. where a pleading contains an Answer, a Motion to Strike or Dismiss, or a Jury Request each shall be set forth in the title.

**D. Margins and Binding.** Margins shall be one ~~half (1/2)~~ ~~(1")~~ inch. Binding or stapling shall be at the top and at no other place. Covers or backing shall not be used.

**E. Signature.** All pleadings and motions shall contain the original or authorized signature of the attorney, the name of the attorney ~~in written and in~~ typed or printed form, the name of the law firm if a member of a firm, the attorney's address, identification number, e-mail address, telephone number, fax number, and the designation as to the party for whom he appears. The following form is recommended:

John Doe  
Attorney Identification Number  
DOE, ROWE, and SMITH  
Suite 35 Blackacre Building  
Indianapolis, Indiana 46204  
[John.doe@DRSlaw.com](mailto:John.doe@DRSlaw.com)  
939-3000 Fax: 233-1744  
Attorney for Defendant  
(Name)

## **LR49-TR5-205. FILING OF PLEADINGS, MOTIONS AND OTHER PAPERS**

**A. Room Clerk.** All pleadings, petitions and motions are filed with the Clerk designated by the Court at any time during office hours established by the Clerk and the Court. All orders submitted to the Court shall be in sufficient number and shall be accompanied by postage paid envelopes addressed to each party or counsel of record.

**B. Facsimile.** Facsimile filing ~~is discouraged, but is~~ permitted in the Marion Circuit and Marion Superior Court. All pleadings documents filed by facsimile shall also be filed in hard copy within seven (7) days of the facsimile filing, along with proposed orders and stamped addressed envelopes, as required by LR49-TR5-203 (E). To avoid duplicate filings, the hard copies of the facsimile filing shall indicate in bold letters that the pleading was previously filed by facsimile transmission. Proof of transmission by facsimile, including certificate of service and manner of service, -shall be the responsibility of the filing party. -If the filing requires immediate attention of the Judge, it shall be so indicated in bold letters in an accompanying transmittal memorandum. ~~Facsimile filing must be through the Clerk's central reception number using assigned user identification number and password.~~ Legibility of documents and timeliness of filing is the responsibility of the sender.

~~**C. — Certification of Service.** Any document filed by facsimile which seeks an Order of Court must be accompanied by two (2) copies of a proposed order, if necessary. The orders must contain the requesting party or attorney's facsimile number in the distribution list. If the Court adopts the proposed order, the Clerk shall return same to sender by facsimile. Upon receipt of the Court's Order, sender shall serve it upon all parties or counsel of record by facsimile or First Class U.S. Mail and file an acknowledgment of receipt and Certification of Service via facsimile to the Clerk's central reception number on the form below.~~

Cause No. \_\_\_\_\_

Acknowledgment and Certificate of Service

I acknowledge receipt of the following order or request from the Court: \_\_\_\_\_ and certify that I have served a copy of the Court's Order or request upon the following parties or counsel of record:

\_\_\_\_\_

\_\_\_\_\_ Via Fax or \_\_\_\_\_ Via First Class, U.S. Mail

Attorney's Name

Attorney Number

Firm Name

Address

Telephone Number

**CDC. Counsel to Furnish Pleadings to Special Judge.** When a Special Judge who is not a Marion County Judge is selected, all parties or attorneys shall furnish such Judge with copies of all filings prior to the qualification of such Special Judge. Thereafter, copies of all filings shall be delivered in person, by mail or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

**D. ~~ED.~~ ~~NN~~umber.** Counsel shall file with the court an original and one copy of all briefs, and memoranda of law filed in support of a motion.

**~~EFE.~~<sup>1</sup> Appearance Form.** Pursuant to Trial Rule 3.1(A), an appearance form shall be filed by the initiating party at the time an action commenced. If the action is appropriate for filing and disposition in Marion Superior Court, Environmental Division, per Order of the Executive Committee of the Marion Superior Court, then the initiating party shall indicate such on the appearance form.

**LR49-TR11-206. SIGNING AND VERIFICATION OF PLEADINGS, MOTIONS**  
**— AND OTHER PAPERS-SERVICE ON OPPOSING PARTY**

In all cases where any pleading or other document is required to be served upon opposing counsel, proof of such service may be made either by:

- (1) a certificate of service signed by counsel of record for the serving party and the certificate shall specify by name and address all counsel upon whom the pleading or document was served or
- (2) an acknowledgment of service signed by the party served or counsel of record.

**LR49-TR16-207. CASE MANAGEMENT**

**A. Case Management Conference.** Plaintiff shall arrange a meeting of all parties within ~~ninety~~(90) days after the filing of a complaint for the following purposes:

<sup>1</sup> Adopted May 21, 2001



1. List of Witnesses. Exchange lists of witnesses known to have knowledge of the facts supporting the pleadings. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known.
2. Documents. Exchange all documents which are contemplated to be used in support of the pleadings. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at time of trial.
3. Other Evidence. Exchange any other evidence reasonably available to obviate the filing of unnecessary discovery motions.
4. Settlement. Discuss settlement of the action.
5. Discovery Schedule. Agree upon a preliminary schedule for all discovery.
6. Complicated Case. Discuss whether the action is sufficiently complicated so that additional conferences may be required.

**B. Case Management Order.** Within ten (10) days after meeting those attending are to file a joint Case Management Order setting forth:

1. the likelihood of mediation and settlement;
2. a detailed schedule of discovery for each party;
3. a limitation on the time to join additional parties and to amend the pleadings;
4. a limitation on the time to file all pre-trial motions;
5. any other matters which the parties want to address;
6. a preliminary estimate of the time required for trial; and
7. the date by which the parties expect the matter to be ready for trial.

#### **LR49-TR16-208. PRE-TRIAL CONFERENCE**

**A. Pre-trial Conference Mandatory.** A pre-trial conference shall be held in every civil jury action. Each party shall be represented at the pre-trial conference by the attorney who will conduct the trial.

**B. Pre-trial Stipulation Must Be Filed.** Counsel for the plaintiff shall see that a pre-trial stipulation is ~~drawn~~prepared, executed by counsel for all parties, and filed with the Court no later than five ~~(5)~~ days prior to the pre-trial conference. The pre-trial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

1. the nature of the action.
2. the basis of jurisdiction.
3. the pleadings raising the issues.

4. a list of all motions or other matters requiring action by the Court.
5. a concise statement of stipulated facts, with reservations, if any.
6. a statement of issues of fact which remain to be litigated at trial.
7. a concise statement of issues of law on which there is agreement.
8. a concise statement of issues of law which remain for determination by the Court.
9. each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit. The list of exhibits shall be on separate schedules attached to the stipulation.
10. each party's numbered list of trial witnesses, with their addresses. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.
11. estimated trial time.

**C. Unilateral Filing of Pre-trial Stipulation Where Counsel Do Not Agree.** If for any reason the pre-trial stipulation is not executed by all counsel, each counsel shall file a proposed pre-trial stipulation not later than five ~~(5)~~ days prior to the pre-trial conference with a statement why no agreement was reached.

**D. Memoranda of Law.** Counsel shall file memoranda treating any unusual questions of law involved in the trial no later than five ~~(5)~~ days prior to the pre-trial conference.

**E. Proposed Jury Instructions.** Seven ~~(7)~~ days prior to trial, counsel shall submit proposed jury instructions to the Court, with copies to all other counsel. Instructions covering matters occurring at the trial which could not reasonably be anticipated may be substituted at the conclusion of the testimony. Each instruction shall be accompanied by citations of authority.

**F. Objections to Proposed Jury Instructions.** Written objections to proposed jury instructions shall be submitted to the Court on or before the first day of trial. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citations of authority.

## **LR49-ADR2-209. ALTERNATIVE DISPUTE RESOLUTION – MEDIATION PROCEDURE**

**A.1.** Case selection shall be governed by A.D.R. Rule 2.2.

**B.2.** Mediator selection shall be governed by A.D.R. Rule 2.4. Mediators approved by the Indiana Supreme Court Commission for Continuing Legal Education shall be entered into the Court's computer system. If the parties are unable to select a mediator by agreement pursuant to A.D.R. Rule 2.4, the Court will generate a list of three mediators by random selection through the computer.

**C.3.** The parties shall have ten ~~(10)~~ days to strike from the panel of mediators named by the Court. The party that initiated the cause of action shall strike first. If the parties fail to strike within ten ~~(10)~~ days, the Court shall select a mediator. Upon selection of the mediator, counsel for the party that initiated the litigation shall submit a proposed order appointing the mediator selected in the case.

D4. During the entire mediation process, the lawsuit shall remain on the Court's docket.

E5. Absent an agreement by the parties or unless otherwise ordered by the Court, ~~the standard fee for mediation ordered by the Court shall be One Hundred and Twenty-Five Dollars (\$ 125.00) per hour, plus expenses and~~ the fees and expenses associated with the mediation shall be shared equally by the parties unless good cause can be shown by a party why an equal division of the fees should not be ordered. In the case of team mediation, the fee is to be split between the mediators as the co-mediators are to be treated as a unit. ~~A mediator may petition the Court for a higher fee predicated on the level of skill necessary to mediate the case, the complexity of the case, and the litigant's ability to pay.~~

F6. The mediator and the parties shall make a good faith effort to complete the mediation process within sixty (60) days from the date of the Order to engage in mediation. In the event that the mediation process is not completed within this time, the mediator shall file a status report with the Court setting forth the projected date of completion.

G7<sup>2</sup>. Within ~~twenty-four (24)~~ hours prior to the scheduled mediation conference or such other time as the mediator declares, the parties shall submit to the mediator a Confidential Mediation Statement. Such statement shall include, without limitation, a brief recitation of: (a) the facts relevant to the dispute; (b) the amount in controversy or other relief requested; (c) the progress of the litigation to date; (d) the status of negotiations; and (e) the factors, including factual and legal contentions as to both liability and damages, which have been considered or relied upon in arriving at the current settlement posture.

H8<sup>3</sup>. All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court or by stipulation of the parties.

I9. After the conclusion of the mediation, the mediator will have fifteen ~~(15)~~ days to prepare and send his or her bill to the parties. The parties shall have ~~fifteen (15)~~ days thereafter to pay the mediator. If the mediator's bill is not paid within ~~thirty (30)~~ days after the close of mediation, the mediator may file a bill with the Court and it shall be reduced to judgment unless objected to by one of the parties within ten ~~(10)~~ days after the filing of the bill with the Court.

### **Mandatory Mediation**

A4. Civil Jury Trials. All cases where a timely demand for jury trial is made, mediation pursuant to A.D.R. Rule 2 and subsection A herein is mandatory. Mediation is to be completed ~~sixty (60)~~ days prior to trial, unless the mediation referral is vacated for good cause shown. Objections to mediation may be made within ~~fifteen (15)~~ days of the completion of the case management conference required by Rule 16.1(A).

B2. Post-Decree Domestic Litigation. Parties must submit post-decree child related issues to mediation prior to presenting such issues to the Court for hearing, unless this rule is waived for good cause shown.

C3. Pro Bono Mediation Services. All mediators maintained on the Court's approved Civil and Domestic Mediation list shall, upon request from any Judge of this Court, serve as a pro bono mediator for at least one (1) case per calendar year.

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<sup>2</sup> Approved by General Term March 7, 2005

<sup>3</sup> Approved by General Term March 7, 2005

D. Any litigant affected by this mandatory mediation order may qualify for pro bono mediation services upon good cause shown, pursuant to criteria established by the Presiding Judges of the Court.

#### **LR49-ADR3-210. ALTERNATIVE DISPUTE RESOLUTION – ARBITRATION PROCEDURE**

A1. Arbitration procedures shall be governed by A.D.R. Rule 3.

B2. Attorneys wishing to serve as arbitrators in the Marion Circuit or Superior Court shall file written notice with the Marion Superior Court Administrator indicating a desire to serve as an arbitrator for cases in Marion County.

~~C3. Arbitrators shall be entered into the Court's computer system. If the parties are unable to agree on a single arbitrator, the Court will generate a list of three arbitrators by random selection through the computer. In the event that the parties wish to have a panel of three arbitrators, each party shall select one arbitrator and the Court will name the third arbitrator by random selection through the computer. Whether the case shall be submitted to a panel of three (3) arbitrators for decision or to a single arbitrator for decision, the court shall utilize the Court's list of arbitrators in a random fashion to provide arbitrators as required by Alternative Dispute Resolution Rule 3.3.~~

~~4D. After the arbitrator selection process has been completed, the party which initiated the litigation shall submit a proposed order appointing the person or persons selected by the parties to act as arbitrator or arbitrators in the case.~~

~~5E. Unless otherwise agreed to by the parties, arbitrators shall be paid at the rate of One Hundred Dollars (\$100.00) per hour. the Court shall set a reasonable rate of compensation for the arbitrator/s) in accordance with A.D.R. Rule 3.3.~~

#### **LR49-ARD1-211. GENERAL PROVISIONS**

1A. These rules are designed to clarify and supplement the Rules for Alternative Dispute Resolution promulgated by the Indiana Supreme Court on January 1, 1992, as amended from time to time. The rules promulgated by the Indiana Supreme Court shall be followed in every way by the parties and shall govern the various forms of Alternative Dispute Resolution stated therein.

2B. The failure to comply any with any Court Order regarding Alternative Dispute Resolution may result in appropriate sanctions being levied by the Court.

#### **LR49-TR32-212. VIDEO TAPE DEPOSITIONS**

All video tape depositions filed with the Court shall be accompanied by a transcript of the testimony.

#### **LR49-TR33-213. INTERROGATORIES**

**A. Number Limited.** Interrogatories shall be limited to a total of ~~twenty-five (25)~~ including subparts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of Court additional interrogatories may be propounded.

**B. Answers and Objections.** Answers or objections to interrogatories under Rule TR 31 or 33 shall set forth in full the interrogatories being answered or objected to immediately preceding the answer or objection.

**C. Duplicated Forms.** No duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the cause in which the same are filed and served.

#### **LR49-TR40-214. SETTING CASES FOR TRIAL**

**A. Setting Cases for Trial.** Litigants desiring their cause of action to be set for trial shall file a written Praecipe for Trial which indicates whether a jury or court trial is requested. No trial date will be set unless a Case Management Order pursuant to Rule 16.1(B) has been filed. The Praecipe shall state the number of days needed to try the case.

**B. Notice in Dissolution and Paternity Matters.** In all dissolution or paternity matters, the Moving party or their counsel shall give notice of the time and place of the hearing or trial by subpoena, notice of hearing or letter, served upon the adverse party at least seven ~~(7)~~ days prior to the trial date and file a copy of said notice with the Court on or prior to the trial date.

#### **LR49-TR53.5-215. ~~MOTIONS.~~ MOTIONS FOR CONTINUANCE**

Motions for Continuance are discouraged. Neither side is entitled to an automatic continuance as a matter of right.

**A. Motion.** A Motion for Continuance, unless made during the hearing of the cause, shall be in writing, state whether opposing counsel objects to the motion and whether prior continuances have been requested by the moving party. The Court may require any written Motion for Continuance to be signed by the party requesting the continuance.

**B. Time for Filing.** Motions for Continuance must be filed as soon after the cause for continuance or delay is discovered by the party seeking same, and no later than seven ~~(7)~~ days before the date assigned for trial, unless the reason therefor is shown by affidavit to have occurred within the seven ~~(7)~~ day period.

**C. Title of Motion.** A Motion for Continuance, whether it is plaintiff's or defendant's motion, shall denominate whether it is the First ~~(1st)~~, Second ~~(2nd)~~, Third ~~(3rd)~~, etc. Motion for Continuance filed by plaintiff or defendant.

**D. Dispositive Motions.** The filing of a dispositive motion shall not constitute good cause for a Motion for Continuance of a trial if the time requirements governing such motion will not allow for the resolution of the motion prior to the date of trial.

#### **LR49-TR55-216. AFFIDAVIT OF DEBT/ATTORNEY FEES IN DEFAULT JUDGMENTS**

On all default judgments relating to commercial cases plaintiff or his counsel must submit an affidavit of debt signed by the plaintiff and an affidavit in support of attorney fees requested by counsel, signed by plaintiff's counsel. The affidavit for attorney fees shall set forth the number of hours spent on the case and the hourly charge.

## **LR49-TR58-217. DUTIES OF ATTORNEYS ON ENTRIES OF JUDGMENTS**

**A. Attorneys to Prepare Documents Requiring Court's Signature.** It shall be the duty of attorneys to prepare decrees of all final judgments and of such interlocutory and other orders as may be required by the Court, including Pre-Trial Orders, Findings of Fact and Conclusions of Law.

**B. Decrees and Entries Prepared by One Attorney to Be Submitted to Other Attorneys Interested in Cause.** Where there are several attorneys interested in a decree, order, entry or judgment to be entered in a cause and one or more of them desires such document entered, he or they, shall submit such document to the other attorneys who may be interested in the cause, and obtain an endorsement thereon of "Inspected", provided that this rule shall not apply when the attorneys of all parties are in court when the judgment or decree is proffered.

**C. Obligation to Keep Themselves Informed of Case Status.** Counsel and parties to a suit should keep themselves informed of all steps taken in all matters pending before the Court, and are bound by the Court's actions, including but not limited to rulings, notice of trial date settings, and current position of cases on jury trial calendar, all without special or additional oral or written notice by the Court.

**D. Duty of Attorney to State Time Required for Hearing.** It is the duty of counsel to determine the amount of time required by both sides for the hearing. No hearing will be scheduled until such time is stated, and it will be limited to the time requested.

## **LR49-TR59-218. SERVICE UPON JUDICIAL OFFICERS**

In addition to serving the judge with a separate copy of motion to correct error pursuant to Ind.Trial Rule 59(C), parties filing motion to correct errors shall also serve the Magistrate or Commissioner with a copy of the motion to correct error if a Magistrate or Commissioner recommended and signed the final judgment or appealable final order at issue. Non-compliance with this Rule shall not be grounds for forfeiture of any post-trial, post-judgment or appellate rights.

## **LR49-TR63-219. WHEN OTHER JUDGES TO PRESIDE**

Whenever the Judge who presides in the Marion Circuit or Superior Court is absent or cannot, for any reason, hear any cause pending in such court, or issue any emergency orders in connection herewith, any other Judge of such Marion Circuit or Superior Court may preside in that court.

## **LR49-TR00-220. EXHIBITS**

All models, diagrams, documents, depositions, or material placed in the custody of the Court Reporter as exhibits shall be removed by the parties offering them in evidence, except as otherwise ordered by the Court, four (4) months after the case is decided unless an appeal is taken. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed with the cause. If not removed after four (4) months, the Court Reporter may dispose of them without notice.

## **LR49-TR76-221. TRANSFER OR CONSOLIDATION OF CASES**

No case filed in the Circuit Court or the Marion Superior Court, Civil Division, may be transferred or consolidated to another room or court except upon written motion accompanied by written order for the signature of the forwarding Court. The order shall not be approved and signed by the forwarding Judge unless such order is consented to in writing by the Judge of the receiving Court.

**<sup>4</sup> LR49-TR76-222. TRANSFER OF CASES ASSIGNED TO THE MARION COUNTY FAMILY COURT PROJECT**

This Rule applies only in the following situations: (1) a child who is the subject of a Child in Need of Services or a Delinquency case is also the subject of a divorce, paternity or guardianship case in which there is a pending or continuing custody, visitation and/or child support order, and (2) these multiple cases have been assigned to the Marion County Family Court Project. The purpose of the rule is to allow the transfer of cases involving the same child or children to the same judge for a temporary period of time. The rule will help to ensure that multiple cases involving the same child will have consistent orders regarding custody, visitation, care, and child support, and multiple hearings and re-hearings will not occur before different judges regarding the same issues.

When consistent with the best interest of the child, the lead Family Court Project Judge may issue an order transferring any of the cases specifically assigned to the Marion County Family Court Project to the Marion Circuit Court or to any Marion Superior Court, Juvenile or Civil Division. The Order of Family Court Assignment shall include the Order of Case Transfer and the order shall state to what court and division the cases have been transferred. The transferred cases will not be consolidated. The court receiving the cases shall have jurisdiction in those cases. Each case will retain its own original docket number and separate Chronological Case Summary.

The lead Family Court Judge shall transfer back to the court of origin any case or cases when the lead judge determines that the purpose of the family court assignment has been completed. The supervising judge shall issue an order "Closing the Family Court Assignment and Transferring Case/s back to the Court of Origin."

A transfer for family court purposes shall not constitute a transfer for purposes of the Quarterly Status Report.

**LR49-TR79-223. INITIAL REQUEST FOR CHANGE OF JUDGE**

**A. Naming of Panel.** Within two ~~(2)~~ days of deciding that a special judge must be appointed under this section, the Court shall submit a panel of three ~~(3)~~ eligible persons to the parties for striking.

**B.<sup>5</sup> Eligible Persons.** All judges of the Marion Circuit and Superior Court Civil Division are eligible persons under this rule except as follows: the judge of the Marion Circuit Court shall not be named on panels for domestic relations cases; the judges of the Juvenile Division and the Environmental Division shall not be named on any panels; and the judge of the Probate Division shall be named only on panels for domestic relations and juvenile cases.

**C. Striking from Panel.** The parties shall have ~~fourteen (14)~~ days to strike from the panel in accordance with Ind.Trial Rule 79(F).

**D. Failure to Strike.** In the event the parties shall fail to strike in a timely fashion, the Clerk of the Marion Circuit and Superior Courts shall strike from the panel for the non moving party.

**LR49-TR79-224. APPOINTMENT BY CLERK**

In the event a special judge does not accept the case under Ind.Trial Rule 79(D)~~(E)~~ (E) or (F) or a judge disqualifies and recuses under T.R. 79(C), the appointment of an eligible special judge as set out in Rule

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<sup>4</sup> Rule 76.1 Adopted and effective July 3, 2003

<sup>5</sup> Amended May 21, 2001



79.1(B) shall be made by the Clerk of the Marion Circuit and Superior Courts by a random process approved by the judges.

#### **LR49-79-225. ACCEPTANCE**

A person selected to serve as special judge under this rule must accept jurisdiction in the case unless the judge so selected is disqualified pursuant to the *Code of Judicial Conduct*, ineligible for service under this Rule, or excused from service by the Indiana Supreme Court. The order of appointment under the Rule shall constitute acceptance. An oath or additional evidence of acceptance of jurisdiction is not required.

#### **LR49-TR79-226. CERTIFICATION TO THE SUPREME COURT**

The Clerk-Presiding Judge of the Marion Circuit and Superior Courts or any judge in whose court a case is filed shall certify to the Indiana Supreme Court all cases in which no judge is eligible to serve as special judge or the particular circumstances of a case warrants selection of a special judge by the Supreme Court under Ind.Trial Rule 79(H)(3).

#### **LR49-TR79.1-227. SPECIAL JUDGE SELECTION PROCESS UNDER LOCAL RULE 79.2**

In the event a special judge does not accept the case under Ind. Trial Rule 79 (D) or (F) or a judge disqualifies or recuses under T.R 79(C) the case file shall be brought to a Superior Court Clerk supervisor in the Marion County Clerk's Office. The supervisor shall utilize a file of index cards on each of which is printed the name of a judge eligible for selection. The supervisor shall select the top card, or the first judge in line for assignment as the special judge in the case. The selected card shall then be returned to the back of the file. In this way, the assignment is always random and no judge is selected on consecutive occasions. Judges eligible for selection under this Local Rule shall be those elected judges serving in the Civil Division of the Superior Court.

A Judge appointed to serve as special judge under this Local Rule must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the Code of Judicial Conduct, ineligible for service under this rule or must be excused from service by the Indiana Supreme Court. The order of appointment under this Local Rule shall constitute acceptance. An oath or additional Evidence of acceptance of jurisdiction is not required.

#### **LR49-TR79.1-227228. MARION COUNTY SMALL CLAIMS COURT CASES**

**A. Issues.** A cause of action which comes to the Marion Superior Court from the Small Claims Courts of Marion County for either jury trial or appeal shall be repleaded in its entirety commencing with the plaintiff below filing a new Complaint in compliance with the Indiana Rules of Trial Procedure. The new Complaint shall be filed within ~~twenty (20) days of the date the cause is docketed~~ of the date the case is docketed and filed in with the Marion Superior Court or as otherwise ordered by the Court. Failure to comply with this Rule shall result in the Court imposing sanctions which may include dismissal or default where appropriate.

**B. Procedure and Evidence.** Any pleadings, motions or other procedural matters which are filed after the filing of the Complaint in the Marion Circuit and Superior Court will be governed by the Indiana Rules of Trial Procedure and the Marion Circuit and Superior Court Rules. Evidentiary questions will be ruled on in the same manner as any other cases originally filed in the Marion Circuit and Superior Court.

**C. Appeals From Marion County Small Claims Courts.** The following rules shall govern all appeals from the Marion County Small Claims Courts to the Marion Superior Court.



(1) Any party may appeal from the judgment of the Marion County Small Claims Court to the Marion Superior Court, within ~~sixty (60)~~ days from its entry; and when there are two ~~(2)~~ or more plaintiffs or defendants, one or more of such plaintiffs or defendants may appeal without joining the others in such appeal or plaintiff may add new parties at the time he repleads his Complaint in accordance with the Indiana Rules of Trial Procedure.

(2) The Small Claims Court Judge shall certify a completed transcript of all the proceedings had before said Judge and transmit the same, together with all other papers in the cause, to the Marion County Clerk, within ~~twenty (20)~~ days.

(3) Appeals may be authorized by the Marion Superior Court after the expiration of Sixty (60) days, when the party seeking the appeal has been prevented from taking the same by circumstances not under his control.

#### **LR49-TR81-~~228229~~. MARION COUNTY LAW LIBRARY**

**A. Taking Books From the Library.** No book, periodical, manuscript or other paper or equipment belonging to the Marion County Law Library, located in the City-County Building, Indianapolis, Indiana, shall be removed therefrom by any person other than a judge of any of the courts located in the City-County Building, without the written consent of one of said judges. Said consent shall be addressed to the Librarian of the Marion County Law Library. Any book or periodical removed from the Library, as aforesaid, may be used only in the City-County Building and must not be taken therefrom.

**B. Sign-Out Procedure.** Any person having authority to remove law books from the Library, as aforesaid, shall sign out for same, giving borrower's name, date of withdrawal and place where book will be used. The borrower shall be held personally responsible for the return of said books to the Marion County Law Library on the same day of their withdrawal. In case the Library is closed said books shall be left with the bailiff of the court where the books were used.

#### **LR49-81-~~229230~~. JOINT SESSION OF CIRCUIT AND MARION SUPERIOR COURTS**

The Judges of the Marion Circuit and Superior Courts may meet in joint session to consider matters of mutual interest.

#### **LR49-84-~~230231~~. EFFECTIVE DATE**

The effective date of these rules shall be March 1, 1999.

## MARION SUPERIOR COURT

### COMMITMENT TO RESPECT AND CIVILITY

I will maintain the highest level of professional integrity and personal courtesy in all dealings with parties, counsel, witnesses and courts.

I will advise clients that I am bound by the responsibilities and restrictions set forth in the Rules of Professional Conduct in all matters relating to the handling of their cases.

I will pursue the advancement of clients' legitimate objectives, but I will not participate in litigation based upon vengeance or other inappropriate emotions.

I will use legal procedures for the fullest benefit of clients without misusing or abusing the legal process.

I will not intentionally speak or act in an abrasive, hostile, offensive or acrimonious manner toward parties, counsel or courts.

I will not knowingly misstate, mischaracterize or fail to disclose relevant facts or legal authority.

I will familiarize myself with and comply with all requirements of the common law, the trial rules, the local rules, and the court policy and procedure.

I will endeavor to have clients fully disclose assets and liabilities, informally exchange information and confer with opposing counsel to discuss settlement, stipulate undisputed matters, and identify issues prior to scheduled hearings.

I will strive to reach agreements on procedural and preliminary matters consistent with clients' legitimate objectives.

I will honor promises and commitments in an effort to raise the level of professionalism and civility.

I will, whenever possible, encourage clients to reach amicable settlement of all issues after careful review of statutes and reasonable consideration of the risks, costs, delay and emotional trauma of trial.

I will not seek judicial intervention in matters that can be resolved through cooperation and communication between counsel and parties.

I will not resort to ex parte proceedings in the absence of extreme emergency, as the interests of justice and fair play mandate notice to the opposing party.

I will not abuse time limitations set by courts, will be punctual and prepared for all court appearances and I will notify the court promptly when a case has been settled or must be continued.

I will prepare clients and witnesses for court appearances and advise them of the conduct required of them in order to promote the prompt and efficient administration of justice and to avoid conduct that brings disorder, disruption and disrespect upon the courts.

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Date

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Signature

IN THE MARION SUPERIOR COURT

# APPEARANCE FORM

Initiating / Responding Party / Intervening Party

(Caption) ) Cause No. \_\_\_\_\_  
 ) (To be supplied by Clerk when case is filed.)  
 )

□ Check if  $Pro\ Se$

1. \_\_\_\_\_  
Name of party

2. Attorney information (as applicable for service of process): **(Pro Se litigants must complete this)**

Name: \_\_\_\_\_ Atty. Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 \_\_\_\_\_ FAX: \_\_\_\_\_  
 \_\_\_\_\_ Email Address: \_\_\_\_\_

3. Will accept Fax service: Yes \_\_\_\_\_ No \_\_\_\_\_

4. Are there now or have there been within the last twelve months pending related cases?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, list case and cause number below:

If the caption has a name other than that of the parties, please explain.

Caption \_\_\_\_\_ Cause No. \_\_\_\_\_

Status

Caption \_\_\_\_\_ Cause No. \_\_\_\_\_

Status\_\_\_\_\_

Caption \_\_\_\_\_ Cause No. \_\_\_\_\_

Status\_\_\_\_\_

APPENDIX B

5. Additional information required by state or local rule:

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6. This appearance form has been served on all parties and/ or counsel.

7. I have reviewed and discussed the **Commitment to Respect and Civility** with my client and agree to aspire to its goals.

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Attorney or Pro Se Signature

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Printed

Pursuant to Trial Rule 3.1, this form shall be filed upon the first appearance in the case. In emergencies, the requested information shall be supplied when it becomes available. Parties shall advise the court of change in information previously provided to the court. The Division of State Court Administration has approved this format.

**PURSUANT TO TRIAL RULE 3.1(E), THIS APPEARANCE FORM SHALL BE UPDATED PROMPTLY SHOULD THERE BE ANY CHANGE IN OR SUPPLEMENT TO THE INFORMATION PREVIOUSLY SUPPLIED TO THE COURT**

**Marion Superior Court**  
**Criminal Rules**

**MARION SUPERIOR COURT  
CRIMINAL DIVISION RULES**

<b>LR49-CR2.2-100</b>	<b>RANDOM ASSIGNMENT</b>
<b>LR49-CR2.3-101</b>	<b>CASE CONSOLIDATION</b>
<b>LR49-CR23-102</b>	<b>RECORDS</b>
<b>LR49-CR00-103</b>	<b>GRAND JURY</b>
<b>LR49-CR00-104</b>	<b>SPECIAL GRAND JURY</b>
<b>LR49-CR00-105</b>	<b>TRIAL RULES</b>
<b>LR49-CR2.1-106</b>	<b>APPEARANCE AND WITHDRAWAL OF COUNSEL</b>
<b>LR49-CR00-107</b>	<b>AUTOMATIC DISCOVERY</b>
<b>LR49-CR00-108</b>	<b>BAIL</b>
<b>LR49-CR20-109</b>	<b>CONTINUANCES</b>
<b>LR49-CR10.1-110</b>	<b>REQUEST FOR GUILTY PLEA HEARING</b>
<b>LR49-TR4.1-111</b>	<b>SERVICE – LAW ENFORCEMENT</b>
<b>LR49-CR00-112</b>	<b>MANDATORY CONSECUTIVE SENTENCES</b>
<b>LR49-CR00-113</b>	<b>TRANSFERS OF PRISONERS TO THE INDIANA DEPARTMENT OF CORRECTIONS</b>
<b>LR49-CR00-114</b>	<b>CASE DISPOSITION GUIDELINES</b>
<b>LR49-CR00-115</b>	<b>COSTS AND FEES</b>
<b>APPENDIX A</b>	<b>SEVERITY LEVEL/OFFENSES</b>
<b>APPENDIX B</b>	<b>COMPAS QUESTIONNAIRE</b>
<b>APPENDIX C</b>	<b>BOND REPORT</b>

# **MARION SUPERIOR COURT**

## **CRIMINAL DIVISION RULES**

### **LR49-CR2.2-100. RANDOM ASSIGNMENT**

- (a) <sup>1</sup> All criminal cases filed in Marion County in the Superior Courts shall be assigned to an individual courtroom on a random basis. The random assignment rule for criminal cases does not apply to certain cases designated by the Court and Prosecutor as belonging in the:

- domestic violence courts; or
- major felony and class D felony drug court; or
- community court; or
- traffic court; or
- those cases involved in case consolidation noted below.

This rule strives for the equalization of caseload among all of the individual courtrooms.

- ~~(b)~~ <sup>2</sup> ~~Cases from the “D” felony courts (F09, F15 and F18) will be transferred to the major felony courts (G01, G02, G03, G04, G05, and G06) at a sufficient number of cases per court per month to be in compliance with the Weighted Caseload Measures requirements of no more than .25 above or below the most recent county average as published by the State Court Administrator’s Office. All hearing will take place in the major felony courts.~~

- ~~(e)(b)~~ All hearings for Major Felony cases will be conducted in the Major Felony Court. Any new filing for a major felony case shall be randomly assigned to one of the multiple courtrooms designated as Major Felony Courts (G01, G02, G03, G04, G05 ~~and~~, G06 and G22) with the exception of a major felony drug offense case, which shall be randomly assigned to major felony drug courts ~~(G20 and G23)~~.

- ~~(d)(c)~~ Initial hearings for all Class D Felony Cases that are the result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court (F11). These cases shall be subsequently assigned on a random basis to one of the multiple courtrooms designated as Class D Felony Courts (F09, F15 ~~and~~, F18 and F24). The random assignment rule for criminal cases does not apply to D felony cases involving allegations of domestic violence or to Class D felony cases designated as drug court cases. Cases involving an allegation of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Class D felony drug cases shall be assigned to the D felony drug court (G14).

- ~~(e)(d)~~ Initial hearings for cases involving Misdemeanor Cases that are a result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court, Court 11. These cases shall be assigned on a random basis to one of the multiple courtrooms designated as Misdemeanor

<sup>1</sup> Rule 1(a) amended July 27, 1999.

<sup>2</sup> Rule 1(b) amended and ratified October 16, 2000, effective April 1, 2000

Courts (F07, F08, F10 and F19). Misdemeanor cases involving allegations of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Misdemeanors involving allegations of violations of traffic laws, with the exception of Operating a Vehicle While Intoxicated, shall be assigned to the Traffic Court (F13). Misdemeanors where the alleged offense occurred within the boundaries of the Community Court Project shall be assigned to the Community Court (F12).

~~(f)(e)~~ If a case involving allegations of domestic violence parties to a civil protective order cases, the criminal cases shall be filed in the same courtroom as the civil protective order cases.

### **LR49-CR2.3-101. CASE CONSOLIDATION**

It shall be the policy of the Marion Superior Court, that wherever possible consistent with good case management principles, cases involving the same defendant shall be consolidated into one court for resolution of all of the pending cases.

(a) **Murder, A, B and C Felony Cases (hereinafter “Major Felony case”)**

Any subsequently filed Major Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

Any subsequently filed D Felony or Misdemeanor Case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

In the event the defendant has an open D Felony or Misdemeanor case pending in any criminal court and is subsequently charged with a Major Felony case, the pending D Felony or Misdemeanor case shall be transferred to the Major Felony Court.

In the event the defendant has an open probation case pending in any criminal court and is subsequently charged with a Major Felony case, the probation case shall be transferred to the Major Felony Court, unless the probation case can be resolved without the resolution of the new Major Felony case.

“Pending” as defined herein means any existing Major Felony, D Felony or Misdemeanor case which is in pre-disposition status.

No classification of cases are exempt from consolidation under this subparagraph.

(b) **D Felony Cases**

Any subsequently filed Misdemeanor or Class D Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest existing Class D Felony case is pending.

In the event the defendant has an open Misdemeanor case in any criminal court and is subsequently charged with a D Felony case, the Misdemeanor case shall be transferred to to the D Felony Court.



In the event the defendant has an open probation case pending in any D Felony or Misdemeanor Court and is subsequently charged with a D Felony case, the probation case shall be transferred to the D Felony Court where the new case has been filed, unless the probation case can be resolved without the resloution of the new D Felony case.

“Pending” as defined herein means any existing Class D Felony or Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17 or cases that are linked with a co-defendant.

(c) **Misdemeanor Cases**

Subject to the provisions of paragraphs (a) and (b) above, any subsequent Misdemeanor case filed against a defendant shall be assigned and/or transferred to the Court where the defendant’s oldest existing Misdemeanor case is pending with the exception that Court 13 (Traffic Court) shall not receive assignment or transfer of cases when Court 13 has the oldest pending case.

In the event the defendant has an open probation case pending in any Misdemeanor Court and is subsequently charged with a new Misdemeanor case, the probation case shall be transferred to the new Misdemeanor Court unless the probation case can be resolved without the resolution of the new Misdemeanor case.

Pending as defined herein means any existing Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17, or cases that are linked with co-defendants.

(d) **PAIR/Forensic Diversion, Mental Illness**

All PAIR and Mental Illness Forensic Diversion matters will be transferred to Criminal Court 8. These cases will remain in Criminal 8 for disposition, if PAIR/Forensic Diversion is unsuccessful.

(e) **Mental Illness/MR/DD**

Any D Felony or Misdemeanor case, in which the defendant’s serious mental illness (Axis I, i.e. schizophrenia, bipolar, major depression) is a factor, and defendants with mental retardation and /or developmental disabilities, may be transferred to Criminal Court 8.

(f) **Other Considerations**

~~(d) — OTHER CONSIDERATIONS~~

In the event that a case involves both felony and misdemeanor offenses, pursuant to Administrative Rule 1, the case shall be considered a Felony case for the application of this rule.

It shall be the responsibility of the Prosecutor's Office Screening Department to provide a listing of all pending cases with the case filing documents to ensure that all case transfers can be made consistent with this rule.

The judge of each room of the criminal division, by appropriate order entered of record may transfer and re-assign to any other room of the criminal division any cause pending in that room subject to acceptance by the receiving court. Further the Presiding Judge of the Criminal Division or the Executive Committee may order the transfer of cases from one court to another if the Presiding Judge or the Executive Committee finds that a transfer and reassignment of cases is necessary to provide for the speedy and fair administration of justice.

All cases received by the criminal division on change of venue from outside Marion County shall be assigned to a room within the division on a random basis by the same method used to assign cases of original jurisdiction in Marion County.

When the State of Indiana dismisses a case and chooses to re-file that case, the case shall be re-filed in the court where the case was originally docketed.

All pleadings, petitions and motions shall be filed with the Clerk designated by the court at any time during filing hours established by the Clerk and the court and shall be accompanied by a proposed order. All orders submitted to the court shall be in sufficient number and shall be accompanied by postage paid envelopes addressed to each party or counsel of record. Service of orders on the Marion County Prosecutor and the Marion County Public Defender Agency may be through mailbox service established in each courtroom.

## **LR49-CR23-102. RECORDS**

(a) The Clerk of the Marion County Circuit Court shall keep and maintain all records in accordance with Trial Rule 77. In addition the criminal division shall enter records of its proceedings and orders issued in the general division order book.

(b) The Clerk of the Marion Circuit Court shall also maintain a grand jury order book in which each impaneling court shall enter all records of proceedings and orders issued pertaining to the regular or special grand jury.

### **LR49-CR00-103. GRAND JURY**

- (a) The judges assigned to preside in the respective rooms of the criminal division with felony jurisdiction shall be in charge of selection, receiving and properly recording indictments and reports of the grand jury, as well as carrying out all other judicial functions relative to the grand jury during the respective quarters to which they have been assigned.
- (b) Effective January 1, 1996, the grand jury shall be impaneled by the Judge of Criminal Division, Room I, for January, February, and March of 1996, as provided by law. Thereafter, the grand jury shall be impaneled in numerical sequence by quarters by each of the criminal courts designated to hear Class A, B, and C felonies. All indictments shall be returned to the impaneling court, who shall order the indictments filed pursuant to Rule 1.

### **LR49-CR00-104. SPECIAL GRAND JURY**

Special grand juries shall be impaneled pursuant to statute and all indictments returned ordered filed by the impaneling judge pursuant to Rule 1.

### **LR49-CR00-105. TRIAL RULES**

- (a) The judges of the Criminal Division shall from time to time convene to adopt rules of procedure and such other business of court as they may deem necessary, proper and advisable, all subject to the ratification of the Marion Superior Court in a general meeting.
- (b) The trial rules of procedure in each room of the criminal division shall be the same as provided for in the Indiana Rules of Trial Procedure and of Criminal Procedure as duly adopted by the Indiana Supreme Court, and as further provided by law.

### **LR49-CR2.1-106. APPEARANCE AND WITHDRAWAL OF COUNSEL**

- (a) Appearance of counsel in all cases shall be made without qualification and in writing in the form designated by Rules of the Indiana Supreme Court. Withdrawals shall be by permission of the court only, and upon written motion of the party wanting to withdraw, showing notification to the client. Upon

entering an appearance, the attorney must become familiar with the Rules of the Criminal Division and rules of the court in which an appearance is entered.

- (b) Pro Se Appearance. A defendant wanting to legally represent himself at trial must direct such request to the court, in clear and unequivocal terms, at least three days before date of trial. Otherwise, said request may be denied.

## **LR49-CR00-107. DISCOVERY**

### **1. GENERAL**

- (a) The court at initial hearing will automatically order the State to disclose and furnish all relevant items and information under this Rule to the defendant (s) within 20 days from the date of the initial hearing, subject to Constitutional limitations and protective orders, and the defendant (s) to provide the State with discovery within 45 days of the initial hearing.
- (b) No written motion is required, except:
  - (1) To compel compliance under this Rule
  - (2) For additional discovery not covered under this Rule
  - (3) For a protective order
  - (4) For an extension of time
- (c) All discovery shall be completed by the omnibus date unless extended for good cause shown.
- (d)<sup>3</sup> Although each side has a right to full discovery under this Rule, each side has a corresponding duty to seek out the discovery. Motions for original discovery and compliance with Indiana Rule of Evidence 404B are unnecessary and disfavored. Motions for specific discovery are permitted. Failure to file a Motion to Compel may result in the waiver of this right; failure to comply with providing discovery may result in sanctions, including the exclusion of evidence.

### **2. STATE DISCLOSURE**

- (a)<sup>4</sup> The State shall disclose the following material and information within its possession or control:
  - (1) The names and last known addresses of persons whom the State intends to call as witnesses, with their relevant written or recorded statements. The State may refrain from providing a witness' address under this rule if

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<sup>3</sup> Rule 7 (1) (d) amended and passed by General Term November 3, 2003

<sup>4</sup> Rule 7(2)a amended May 25, 1999

the State in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness or the witness' immediate family. If the State does not disclose the witness' address for the reason stated under this rule then the State shall make the witness available for deposition or interview by defense counsel upon reasonable notice.

Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the court may take such action as appropriate.

The Court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

- (2) Any written, oral or recorded statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgement of such statements.
- (3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.
- (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.
- (5) Any books, papers, documents, photographs, or tangible objects that the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.
- (6) Any record of prior criminal convictions that may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7)<sup>5</sup> All evidence required by Indiana Rules of Evidence 404(B), at least 30 days prior to trial, or within two weeks following the request for trial, whichever is later.

- (b) The State shall disclose to defense counsel any material or information within its possession or control that tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore.
- (c) The State may perform these obligations in any manner mutually agreeable to the prosecutor and defense counsel.

### **3. DEFENDANT DISCLOSURE**

(a)<sup>6</sup> Defendant's counsel shall furnish the State with the following material and information within his/her possession or control.

- (1) Any defense that he/she intends to make at a hearing or trial.
- (2) The names and last know addresses of persons whom the defense intends to call as witnesses, with their relevant written or recorded statements and any record of prior criminal convictions known to him/her. The defense may refrain from providing a witness' address under this rule if the defense in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness or the witness' immediate family. If the defense does not disclose the witness' address for the reason stated under this rule then the defense shall make the witness available for deposition or interview by counsel for the State upon reasonable notice. Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the court may take such action as is appropriate. The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.
- (3) Any books, papers, documents, photographs, or tangible objects he/she intends to use as evidence.

<sup>5</sup> Rule 7(2)(a)(7) adopted by General Term November 3, 2003

<sup>6</sup> Rule 7(3)a amended May 25, 1999.

- (4) Medical, scientific, or expert witness evaluations, statements, reports, or testimony that may be used at a hearing or trial.
- (5)<sup>7</sup> All Evidence required by Indiana Rules of Evidence 404(B), at least 30 days prior to trial, or within two weeks following the request for trial, whichever is later.
- (b) After the formal charge has been filed, upon written motion by the State, the Court may require the accused, among other things, to:
  - (1) Appear in a line-up.
  - (2) Speak for identification by witnesses to an offense.
  - (3) Be fingerprinted.
  - (4) Pose for photographs not involving re-enactment of a scene.
  - (5) Try on articles of clothing.
  - (6) Allow the taking of specimens of material from under his/her fingernails.
  - (7) Allow the taking of samples of his/her blood, hair, and other materials of his/her body that involve no unreasonable intrusion.
  - (8) Provide a sample of his/her handwriting.
  - (9) Submit to a reasonable physical or medical inspection of he/her body.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his/her counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his/her release.

#### **4. ADDITIONS, LIMITATIONS, AND PROTECTIVE ORDER.**

- (a) *Discretionary Disclosures.* Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court, in its discretion, may require disclosure to defense counsel of relevant material and information not covered by this Rule.
- (b) *Denial of Disclosure.* The court may deny disclosure authorized by this Rule if it finds that there is a substantial risk to any person of physical harm,

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<sup>7</sup> Adopted by General Term November 3, 2003

intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure to counsel.

(c) *Matters Not Subject to Disclosure.*

- (1) Work product. Disclosure hereunder shall not be required of legal research or records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his/her staff.
  - (2) Informants. Disclosure of an informant's identity shall not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the Constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.
- (b) Either side may apply for a protective order for non-disclosure of requested discovery.

## **5. DEPOSITIONS**

Any sworn tape-recorded interview in which the prosecutor, the defense attorney and the witnesses are present shall be considered a deposition under the Indiana Trial Rules. Deputy prosecutors and public defenders shall cooperate in using such recorded statements instead of formal depositions under any circumstance that will expedite case preparation.

## **LR49-CR00-108. BAIL**

Bail shall be set in accordance with the Marion Superior Court Rule on Admission to Bail and Pretrial Release as amended and subject to changes by judicial order.

The Marion Superior Court has adopted as a tool for setting an appropriate bail the Northpointe COMPAS Risk Assessment software application. The Bail Guideline Matrix herein is designed to provide information and guidance to the Probation Staff and judicial officers of the Arrestee Processing Center in setting the initial bail or in altering bail amounts in order to maintain compliance with the federal court order governing population limits in the Marion County Jail. The individual Judges, Magistrates and Commissioners of the Marion Superior Court retain discretionary authority to adjust bail as individual circumstances may require. This discretionary authority to set or alter bail is limited, however, to those individuals, whose cases are under the direct jurisdiction of a specific Judge, Magistrate or Commissioner.

## **GENERAL PROVISIONS**



The COMPAS Risk Assessment tool is a computerized database and analysis system developed from many years of research into criminological factors surrounding the commission of crimes. Detailed statistical modeling was also employed to ensure a scientific basis for the criminological factors and the risk an individual poses for four distinct categories of behavior – violence, recidivism, flight (failure to appear) and non-compliance (technical violations).

COMPAS is based on a series of questions and answers provided by each individual brought to the Arrestee Processing Center (APC) following an arrest for a criminal offense. The questionnaires used in this process are set forth in Appendix B which is made part of this rule. Verification of the information provided shall be attempted by Probation staff of the Marion Superior Court. For purposes of the Bail Guideline Matrix, the Marion Superior Court is using only the risk factors of violence and failure to appear (FTA).

#### CHARGE SEVERITY LEVELS

There shall be six charge severity levels for misdemeanors and felonies as set forth in Appendix A which is a part of this Rule.

#### COMPAS RISK FACTORS

Based upon the questions asked of individuals arrested for criminal offenses at the APC and the information provided and verified, the COMPAS tool will generate a violence factor and an FTA factor for each person. There are seven separate violence categories ranging from a low of 1 to a maximum of 10. There are 3 separate FTA categories in ranges from 1-3, 4-7, and 8-10.

#### BAIL GUIDELINES MATRIX

The amount of recommended bail or an individual's eligibility for release on his or her personal recognizance or the pretrial conditions established for an individual's release are reflected in the Bail Guideline Matrix set out in Appendix C and made a part of this Rule. The Matrix applies the charge severity levels to the COMPAS Risk Factors. The Matrix recommends release, release to pretrial with conditions, release to Marion County Community Corrections and bail amounts. The Matrix provides an option to either set a bail amount or a release with conditions in consideration of the charge severity and COMPAS Risk Factors.

#### APC INITIAL HEARING COURT

The initial hearings for all individuals brought to the APC as a result of an arrest for a criminal offense and for which misdemeanor and/or D felony charges are filed shall be conducted by the judicial officers at the APC Court. All other felony charges and all of

the charges filed against an individual after that individual has been released from the APC shall be heard in an initial hearing conducted in the Court where the case was randomly assigned.

Any individual who remains in custody following his or her initial hearing at the APC Court shall have a bond hearing or pretrial conference scheduled in the Court where the case has been randomly assigned for the next available date consistent with the Judge's scheduling order. For all domestic violence cases where an individual remains in custody following the initial hearing at the APC Court, a bond hearing shall be scheduled within four business days from the date of the initial hearing in the Court where the case has been randomly assigned within the 72 hour deadline established by state statute.

#### INMATE MANAGEMENT RELEASES

The Marion Superior Court is committed to ensuring the Marion County Jail remains in compliance with a Federal Court Order establishing population limits. The judicial officers assigned to the APC Court, under the direct supervision of designated judges and the Executive Committee of the Superior Court shall have the authority and discretion to adjust bail and set release conditions on any individual subject to the Court's jurisdiction for purposes of maintaining the population of the jail within the limitations of the federal order.

In making decisions to adjust bail or set release conditions, the judicial officers of the APC shall confer with officials of the Marion County Sheriff's Department to determine the number of bail adjustments or releases that are required on a particular date. The APC judicial officers shall only adjust bail and release individuals from the jail to accommodate the Sheriff's specific request for relief in meeting the federal limit. The Judicial officers, when making these decisions, shall use all reasonably available information, including but not limited to, COMPAS Risk Factors and the Bail Guidelines Matrix, court files, case chronologies, probation files and the Sheriff's jail management system.

#### BAIL POSTINGS

Judges, Magistrates and Commissioners (Judicial Officers) shall have the ability to determine the appropriate bond type for each individual charged with a criminal offense.

If a judicial officer specifies the bond be a surety bond (SR), only a licensed bonding agent may post the bond for that individual. Surety bonds shall not be interchangeable with any other bond types.

If a judicial officer specifies the bond be a cash bond (CS) then one hundred percent (100%) of the bond amount must be posted in cash. Cash bonds shall not be interchangeable with any other bond type.

If a judicial officer specifies the bond be a ten percent (10%) cash bond (PR) the bond may be satisfied by posting a PR, SR or CS bond.

Judicial officers have the authority to require a combination of different bond types to satisfy a single bail in an individual situation. The posting of such a split bond must satisfy the requirements of this section.

### **LR49-CR20-109. CONTINUANCES**

- (a) Felonies/misdemeanors: If a party desires to continue a setting in a felony or misdemeanor case, trial or otherwise, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. The motion shall also include the type of hearing, opposing counsel's position, and suggested dates for the court. Such motion shall be filed at least five days (excluding Saturdays, Sundays and court holidays) before the setting that the party desires the court to continue unless the time has been modified by the judge presiding over the cause. A written order with sufficient copies for all parties shall accompany the motion. Until such motion is granted by the court, it shall be deemed denied.
- (b) Infractions/ordinance violations: If a party desires to continue a setting in a case involving only infractions and/or ordinance violations, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. Such motion shall be filed at least ten days (excluding Saturdays, Sundays, and court holidays) prior to the setting that the party desires the court to continue.
- (c) No criminal court shall grant a continuance in excess of 14 calendar days for in-custody D felony and misdemeanor cases, or in excess of 30 calendar days for in-custody major felony cases, without good cause shown.

### **LR49-CR10.1-110. REQUEST FOR GUILTY PLEA HEARING**

The court will set a guilty plea hearing only after an oral request on the record or a written pleading, i.e., a petition to enter plea of guilty or a plea agreement is filed.

### **LR49-TR4.1-111. SERVICE - LAW ENFORCEMENT**

Service of a subpoena may be made upon a law enforcement officer, by delivering the subpoena to the officer's place of employment. A copy of the subpoena shall be left with the official in charge of the department. It shall be the duty of the official to immediately deliver the subpoena to the officer being served. Service in this manner shall be deemed service on the officer.

## **LR49-CR00-112. MANDATORY CONSECUTIVE SENTENCES**

Where consecutive sentencing is mandated under Indiana Code 35-50-1-2(d), the sentence calling for more restrictive placement shall be served prior to any sentence for less restrictive placement. For purpose of this rule, the following placements are listed in order from most restrictive to least restrictive:

1. Incarceration at the Indiana Department of Corrections
2. Incarceration at the Marion County Jail
3. Incarceration at the Correctional Component (Jail Annex) of Marion County Community Corrections
4. Commitment to a Work Release Facility (VOA or Riverside)
5. Commitment to Home Detention with Electronic Monitoring
6. Commitment to Day Reporting

If the sentence calling for more restrictive sentencing is entered after the sentence for less restrictive sentencing, the Judge ordering less restrictive placement shall issue an amended abstract ordering such sentence to be served consecutive to the more restrictive placement. The amended abstract shall be issued no more than 10 days following notice that a more restrictive sentence has been entered.

Where terms of probation are mandated to run consecutively under Indiana Code 35-40-1-2(d), the term calling for the least restrictive conditions shall run consecutive to the term(s) calling for more restrictive conditions. The Marion Superior Probation Department shall make the determination as to which term of probation is most restrictive, and as to which term shall be served first.

The Chair of the Criminal Division is authorized to issue any orders necessary to enforce the provisions of this rule.

## **LR49-CR00-113. TRANSFERS OF PRISONERS TO THE INDIANA DEPARTMENT OF CORRECTIONS**

Unless otherwise ordered by the Court, any defendant sentenced for a felony offense, including Class D Felonies, shall be sentenced to the Indiana Department of Corrections.

In cases where a defendant has been sentenced to the Indiana Department of Corrections and has another case pending in Marion County, the Marion County Sheriff may not transfer the defendant to the Department of Corrections without first providing seven days notice to the Court with jurisdiction over the pending case. Either party may petition the Court to have a defendant or prisoner held in the Marion County Jail. The Court shall promptly notify counsel in the pending case of the defendant's proposed transfer to the Department of Corrections. After seven days, the defendant shall be transferred to the Department of Corrections

unless the Court issues an Order for good cause shown to hold the defendant in the Marion county jail. The Marion County Sheriff's Department shall then notify the Court with jurisdiction over the defendant's pending case, that the defendant has been transferred to the Indiana Department of Corrections. Notification under this rule should be by facsimile or electronic mail.

#### **LR49-CR00-114. CASE DISPOSITION GUIDELINES**

Unless there is good cause shown, all criminal matters with a jailed defendant shall be tried, plead or dismissed as follows:

1. All misdemeanors within 45 days of initial hearing.
2. All class D felonies within 90 days of initial hearing.
3. All class C felonies within 120 days of initial hearing.
4. All class A and B felonies within 180 days of initial hearing.
5. Murder cases within 365 days of initial hearing.

The following deadlines shall apply to all cases filed in the ~~Major Felony Courts (G01-G06) of the Criminal Division of the~~ Marion Superior Court after the effective date of this rule:

Initial Discovery is to be provided according within the following time frame:

C Felonies .....	20 days after initial hearing
A & B Felonies .....	20 days after initial hearing
Murder .....	30 days after initial hearing

State's Notice of Intended Witnesses and Exhibits is to be filed within the following time frame:

C Felonies .....	20 days after initial discovery
A & B Felonies .....	20 days after initial discovery
Murder .....	30 days after initial discovery

Defendant's Notice of Intended Witnesses and Exhibits is to be filed within the following time frame:

C Felonies .....	5 days after receipt of State's Notice of Witnesses
A & B Felonies .....	5 days after receipt of State's Notice of Witnesses
Murder .....	5 days after receipt of State's Notice of Witnesses

Depositions are to be scheduled within the following time frame:

C Felonies .....	30 days after receipt of Notice of Witnesses & Exhibits
A & B Felonies .....	45 days after receipt of Notice of Witnesses & Exhibits
Murder .....	60 days after receipt of Notice of Witnesses & Exhibits

Counsel seeking depositions are to confer with opposing counsel to determine dates that are mutually convenient to all counsel and the potential deponent.

Motions (Substantive), for which deadlines are not otherwise established by statute or rule, including but not limited to Motions to Suppress, Requests for Hearings under the Protected Person Statute and IRE 702, are to be filed within the following time frame:

C Felonies .....	30 days after receipt of Notice of Witnesses & Exhibits
A & B Felonies .....	30 days after receipt of Notice of Witnesses & Exhibits
Murder .....	30 days after receipt of Notice of Witnesses & Exhibits

#### Final Witness & Exhibit List

C Felonies .....	15 days before any scheduled trial date
A & B Felonies .....	30 days before any scheduled trial date
Murder .....	30 days before any scheduled trial date

#### Motions in Limine

C Felonies .....	3 business days before final pre-trial conference
A & B Felonies .....	5 business days before final pre-trial conference
Murder .....	5 business days before final pre-trial conference

#### Objections/Responses to Motions in Limine

C Felonies .....	1 business day before final pre-trial conference
A & B Felonies .....	2 business days before final pre-trial conference
Murder .....	2 business days before final pre-trial conference

#### Proposed Preliminary Instructions

C Felonies .....	2 business days before trial date
A & B Felonies .....	2 business days before trial date
Murder .....	2 business days before trial date

Sanctions: Failure to comply with the provisions of this rule may result in sanction including exclusion of witnesses or exhibits, continuance of a trial charged to the party necessitating the continuance, issuance of an order compelling or prohibiting discovery, or any other remedy deemed appropriate by the court.

#### **LR49-CR00-115. COSTS AND FEES**

- A. In addition to costs as set by I.C. 33-37-4-1 ~~W~~ whenever an individual is placed on probation the following fees and costs shall be imposed under the Probation Order unless the sentencing Judge specifically modifies the Order. The fees and costs collected ~~under the Probation~~ under the Probation Order shall be applied in this order of priority.

Administrative fee <del>(felony)</del>	<del>\$100.00</del>
<del>Administrative fee (misdemeanor)</del>	<del>\$ 50.00</del>
Probation User fee <del>(felony)</del>	<del>\$100.00 plus \$30.00 per month</del>
<del>Probation Use fee (misdemeanor)</del>	<del>\$ 50.00 plus \$20.00 per month</del>
Alcohol and Drug Service fee <del>(A felony—A misdemeanor) (33-37-5-8)</del>	<del>\$300.00</del>
Alcohol and Drug Service fee (B and C misdemeanor)	\$200.00
<del>Drug Testing fee (Non-ADS, A-C felony)</del>	<del>\$200.00</del>
<del>Drug Testing fee (Non-ADS, D felony/A misdemeanor)</del>	<del>\$100.00</del>
<del>Drug Testing fee (Non-ADS, B and C misdemeanor)</del>	<del>\$ 50.00</del>
Court Costs <del>(— (33-37-4-1)</del>	<del>\$134.00 and \$134.50 I.C.</del>
Public Defender Reimbursement <del>(felony)*</del>	<del>\$100.00</del>
<del>Public Defender Reimbursement (misdemeanor)*</del>	<del>\$ 50.00</del>
Safe School fee (I.C. 33- <del>1937-65-1618</del> )	<del>\$200.00</del>
Child Abuse Prevention fee (I.C. 33- <del>1937-65-12</del> )	<del>\$100.00</del>
Drug Interdiction fee (I.C. 33- <del>1937-65-9</del> )	<del>\$200.00</del>
Alcohol Countermeasures fee (I.C. 33- <del>1937-65-10</del> )	<del>\$200.00</del>
Domestic Violence fee <del>(33-37-5-13)</del>	<del>\$ 50.00</del>

(\*Fee imposed only after judicial determination of ability to pay)

In the event that these specific fees, or any other court ordered fees, ~~fees~~ are not paid, the Court may enter judgment against the individual and may seek appropriate steps to collect the judgment owed.

- B. Whenever a juvenile is placed on probation from Juvenile Court the following fees and costs shall be imposed under the appropriate Court Order unless the Judge presiding over the case specifically modifies the Order. The fees and costs collected under the Order shall be applied in this order of priority.

Probation Administrative Fee  
 Probation User Fee  
 Restitution  
 Public Defenders Fee  
 Court Costs

- C. Whenever a person is ordered by any Judicial Officer of the Marion Superior Court to be tested by the Marion Superior Court Drug Testing Laboratory, an appropriate ~~five dollar~~

~~(\$5.00) fee~~ shall be ~~imposed~~paid at the time of testing. The Marion County ~~Clerk~~  
Drug Lab shall collect said fee and all such fees shall be Probation Department funds.

If a confirmatory test is requested by an individual, ~~the fee for such test shall be an~~  
appropriate fee shall be paid at the time of testing. twenty-five dollars (\$25.00). The  
Judicial Officer ordering an individual for drug testing retains the authority to determine  
that individual is indigent and order a waiver of the testing fee.



**MARION CIRCUIT AND SUPERIOR COURT**

**FAMILY LAW RULES**

**LR49-FR00-500 COMMITMENT TO RESPECT AND CIVILITY**

**LR49-FR00-501. TITLE AND SCOPE**

**LR49-FR00-502. ADMINISTRATIVE PROCDEDURES**

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**LR49-FR00-504. FINANCIAL DECLARATION FORM**

**LR49-FR00-505. CHILD SUPPORT GUIDELINES**

**LR49-FR00-506. SUBMISSION OF AGREED MATTERS**

**LR49-FR00-507. TEMPORARY RESTRAINING ORDERS**

**LR49-FR00-508. CHILD CUSTODY AND VISITATION; REFERRALS**

**LR49-FR00-509. ATTORNEY FEES**

**LR49-FR00-510. PARENTING TIME ORDERS**

**LR49-FR00-511. CASE MANAGEMENT CONFERENCES**

**LR49-FR00-512.TERMINATION OF REPRESENTATIVE CAPACITY**

## **LR49-FR00-500. FAMILY LAW COMMITMENT TO RESPECT AND CIVILITY**

### **PREAMBLE**

The Members of the Family Law Section of the Indianapolis Bar Association, recognizing the high degree of conflict and the volatile nature of domestic disputes, their impact on children and the need for direction in balancing the duty to represent the client with the obligation to rational, peaceful and efficient administration of justice, now make this pledge to promote the highest degree of respect and civility in conduct with parties, attorneys and courts.

### **GUIDELINES**

I will maintain the highest level of professional integrity and personal courtesy in all dealings with parties, counsel, witnesses and courts.

I will advise clients that I am bound by the responsibilities and restrictions set forth in the Rules of Professional Conduct in all matters relating to the handling of their cases.

I will pursue the advancement of clients' legitimate objectives, but I will not participate in litigation based upon vengeance or other inappropriate emotions.

I will use legal procedures for the fullest benefit of clients without misusing or abusing the legal process.

I will not intentionally speak or act in an abrasive, hostile, offensive or acrimonious manner toward parties, counsel or courts.

I will not knowingly misstate, mischaracterize or fail to disclose relevant facts or legal authority.

I will familiarize myself with and comply with all requirements of the common law, the trial rules, the local rules, and the court policy and procedure.

I will endeavor to have clients fully disclose assets and liabilities, informally exchange information and confer with opposing counsel to discuss settlement, stipulate undisputed matters, and identify issues prior to scheduled hearings.

I will strive to reach agreements on procedural and preliminary matters consistent with clients' legitimate objectives.

I will honor promises and commitments in an effort to raise the level of professionalism and civility in domestic matters.

I will advise clients of the legal standards by which courts decide family law issues including the rebuttable presumption of an equal division of the marital estate and application of the best interest standard when determining custody of the children.

I will, whenever possible, encourage clients to reach amicable settlement of all issues after careful review of statutes and reasonable consideration of the risks, costs, delay and emotional trauma of trial.

I will not seek judicial intervention in matters that can be resolved through cooperation and communication between counsel and parties.

I will not resort to ex parte proceedings in the absence of extreme emergency, as the interests of

justice and fair play mandate notice to the opposing party.

I will not abuse time limitations set by courts, will be punctual and prepared for all court appearances and I will notify the court promptly when a case has been settled or must be continued.

I will prepare clients and witnesses for court appearances and advise them of the conduct required of them in order to promote the prompt and efficient administration of justice and to avoid conduct that brings disorder, disruption and disrespect upon the courts.

#### **~~RULE 1~~ LR49-FR00-501. TITLE AND SCOPE**

**A. Title.** These Rules shall be known as the Marion Circuit and Superior Court Family Law Rules.

**B. Scope.** These Rules are in addition to the Marion Circuit and Superior Court Civil Division Rules. In the event of a conflict between the Civil Division and Family Law Rules, these Rules shall control. The Indiana Trial Rules and Indiana Rules of Evidence also apply in all family law matters.

*Adopted February 4, 2002; effective March 1, 2002.*

#### **~~RULE 2~~ LR49-FR00-502. ADMINISTRATIVE PROCEDURES**

**A. Provisional Orders.** A request for provisional orders may be made a part of the petition for dissolution of marriage, legal separation or paternity, in which case the petition shall be titled "Petition for Dissolution of Marriage [Legal Separation] [Paternity] and for Provisional Orders".

**B. Time Required.** In all contested family law matters, the moving party shall advise the court of the time required for hearing and contested issues to be considered in the text of a petition or praecipe for hearing. Parties should petition for time necessary for hearing with the expectation that each side will be allotted one-half of the total time allocated. The court normally allows 15 minutes for preliminary hearings and contempt petitions.

**C. Summary Presentation.** By agreement of the parties, all issues and evidence relevant to a domestic relations case may be presented in summary fashion by counsel.

**D. Copies Required.** The parties shall submit sufficient copies of the Final Decree and Property Settlement for the court to retain an original and two copies of each and provide copies to all parties or counsel of record.

**E. Bench Warrant.** In order to obtain a bench warrant from the court, a party must have personal service on the adverse party and complete a bench warrant information sheet. The court may issue a bench warrant on copy service with sworn testimony confirming actual notice to the adverse party.

**F. Summons and Appearance.** In all family law matters, the petitioner shall use the form of summons and appearance form set forth in Appendix A and shall attach the Verified Financial Declaration Form. Only the last 4 digits of a social security number should appear on the appearance form.

**G. Verification.** Verification language where required shall be in the form as stated in Indiana Trial Rule 11(B): I affirm, under the penalties for perjury, that the foregoing representations are true.

**H. Mandatory Mediation.** Parties must submit all contested final hearing issues requiring two ~~(2)~~ hours or more of court time and all non-contempt post-decree child related issues to mediation prior to presenting the issues to the court for hearing, unless this rule is waived for good cause shown after written request by a party. The court may in its discretion assign matters to mediation at any stage of the proceeding.

**I. Negotiations.** Parties and counsel shall exchange documents, negotiate pending issues prior to scheduled hearing time and report to the Court.

*Adopted February 4, 2002; effective March 1, 2002.*

#### **LR49-FR00-503. NOTICE AND SPECIAL DISCLOSURE REQUIREMENTS**

A. **Notice.** In all relevant family law matters, the moving party shall give notice of the time, place of the hearing or trial and that matters may be heard and determined in a party's absence, by summons, subpoena, order to appear, notice of hearing ~~or letter~~, served upon the adverse party at least seven ~~(7)~~ days prior to the hearing or trial and file a copy of the notice with the Court. Proof of service by certified mail or sheriff is generally required.

B. **Other Pending Legal Proceedings.** In all family matters, the moving party shall provide the court with written notice of all other pending legal proceedings in which either party is involved. The written notice shall include the cause number, name and location of the court, names of parties involved and nature of the legal proceeding, per the appearance form in Appendix ~~AB~~.

C. **Ex Parte Proceedings.** The Court in its discretion shall decline to issue an order on any *ex parte* petition for emergency relief absent a showing the moving party has complied with Trial Rule 65 and Indiana case law.

D. **Children Cope with Divorce.** Prior to a final hearing in a dissolution involving minor children or paternity proceeding, the parties shall attend and ensure that the court is provided with written certification that the parties have completed a Children Cope with Divorce Program, or similar type program approved by the Court, unless waived by the Court.

E. **Child Support Account Information Form.** In all family law matters, the parties shall use the Child Support Account Information Form set forth in Appendix ~~BC~~. Anytime the court signs an order creating, modifying or terminating a child support obligation, the parties shall complete and submit a Child Support Account Information Form to the Clerk of the Marion Circuit and Superior Courts.

*Adopted February 4, 2002; effective March 1, 2002.*

#### **~~RULE 4~~ LR49-FR00-504. FINANCIAL DECLARATION FORM**

A. **Requirement<sup>1</sup>.** In all family law matters, the initiating party shall complete, serve and file a Financial Declaration Form within 30 days of filing a Petition for Dissolution of Marriage, Legal Separation or to Establish Paternity or a Petition for Modification of Child Support or at ~~least 7~~ least seven days prior to any hearing, whichever is sooner. A blank form shall be served upon the responding party with the summons or order to appear instructing the respondent to complete, serve and file the form within ~~30~~ days of receipt or at ~~least 7~~ seven days prior to any hearing, whichever is sooner. Failure by any party to submit the Verified Financial Declaration Form as required shall

preclude him or her from presenting evidence as to those matters contained in the Verified Financial Declaration Form, except for good cause shown. These time limits may be amended by court order for good cause shown.

**B. Exceptions.** The Financial Declaration Form need not be exchanged if:

       1. The parties have obtained leave of court;

<sup>1</sup> Amended 9/20/2004;Effective 1/1/2005

- or
2. The parties have a signed agreement;
  3. The proceeding is one in which the service is by publication and there is no response;
  4. The proceeding is post-decree and concerns issues without financial implications.
- Provided, however, when the proceeding is post-decree and concerns only a child support arrearage, the alleged delinquent party shall complete the entire Form, while the support recipient need complete merely that portion thereof which requires specification of the basis of the arrearage calculation.

**C. Admissibility.** Subject to specific evidentiary challenges, the Financial Declaration shall be admissible into evidence upon filing.

**D. Supporting Documents.** For the purpose of providing a full and complete verification of income, assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. At the minimum this shall include current wage records, income tax returns and supporting documentation. "Reasonably available" means that material which may be obtained by letter accompanied with an authorization, but does not mean material that must be subpoenaed or is in the possession of the other party. The court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other supporting documentation. Such supporting documentation shall not be attached to the Financial Declaration filed with the court, or, if attached, shall have all information redacted as necessary to comply with Indiana Trial Rule 5 (G). Supporting documentation, if relevant, may be admitted into evidence at a hearing as an exhibit subject to the Rules of Evidence.

**E. Financial Declaration Forms -- Mandatory Discovery.** The exchange of Financial Declaration Forms constitutes mandatory discovery and Indiana Trial Rule 37 sanctions apply. The Forms shall be supplemented if additional material becomes available pursuant to Indiana Trial Rule 26(E)(2).

*Adopted February 4, 2002; effective March 1, 2002*

## **RULE 5 LR49-FR00-505. CHILD SUPPORT GUIDELINES**

**A. Child Support Worksheet Required.** In all proceedings involving child support or educational expenses, a Child Support Worksheet shall be provided with any settlement agreement, final decree, or at the time of any hearing or trial.

**B. Deviation from the Child Support Guidelines.** If an agreement concerning child support provides any deviation from the Child Support Guidelines, the parties shall provide the court a written explanation for the deviation.

**C. Income Withholding Order Required.** In all proceedings involving child support, absent other court order, an Income Withholding Order providing for payment through the state collection agency, shall be submitted with any settlement agreement, final decree, or modification.

*Adopted February 4, 2002; effective March 1, 2002.*

## **LR49-FR00-506. SUBMISSION OF AGREED MATTERS**

**A. Written Agreement Required.** No agreed matter shall be submitted unless accompanied with a signed agreement and other appropriate documents such as a Decree. ~~If the agreement contains provisions relating to children, the agreement shall include sufficient information regarding the best interests of the child/children.~~ However, if the parties reach a settlement just prior to hearing or trial and there is insufficient time for the attorneys to prepare a typewritten agreement, then the court may accept evidence of that settlement in handwritten form and on the record. If the agreement is entered orally on the record, counsel shall submit an order setting forth the agreement for approval by the court within ten (10) days or such additional time as the court may allow.

**B. Petition for Modification Required.** A verified Petition for Modification shall be included with any Agreed Entry pursuant to Indiana Trial Rule 7(B).

*Adopted February 4, 2002; effective March 1, 2002.*

## **RULE 7 LR49-FR00-507. TEMPORARY RESTRAINING ORDERS**

Subject to the provisions of Indiana Trial Rule 65 and Indiana case law, in all family law matters, the court may issue a Temporary Restraining Order without hearing or security, if either party files a **verified petition** with specific allegations that irreparable harm or injury would result to the moving party if no immediate order were issued, or as otherwise as delineated in this Rule.

**A. Joint Order.** If the court finds that an order shall be entered, the court **may** enjoin both parties from:

1. Transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage without the written consent of parties or the permission of the court;
2. Removing any child of the parties then residing in the State of Indiana from the State with the intent to deprive the court of jurisdiction over such child without the prior written consent of all parties or the permission of the court.

**B. Separate Order Required.** In the event a party seeks to enjoin the non-moving party from abusing, harassing or disturbing the peace, of the moving party or any child or step-child of the parties, or exclude the non-moving party from the marital residence, the petition must allege specific facts indicating more than a generalized fear of an adverse action; contain evidence of actual or threatened physical or emotional abuse sufficient to find a risk of imminent danger; in the case of an eviction or custody request also show that the moving party is physically available to testify unless there is a showing of exceptional circumstances; and in all cases for restraining order, certify to the court the reasons supporting the claim that notice cannot be given. **A joint or mutual restraining or protective order shall not be issued.** If both parties allege injury, they shall do so by separate petitions. The court shall review each petition separately and rule on each with separate orders.

**C. Confidential Form.** The moving party **shall** provide the court with a completed Confidential Form concerning the non-moving party. ~~See Appendix C.~~

**D. Notice of Termination.** When a court issues a Temporary Restraining Order under Indiana Code § 31-15-4-3 and a protective order exists for the parties under Indiana Code § 34-26-2 *et seq.*, a Notice of Termination of the protective order shall be completed pursuant to Indiana Code § 34-26-2-13. A Notice of Termination shall be completed when a Temporary Restraining Order is dissolved by the entry of a decree or court order. ~~See Appendix D.~~

**E. Notice of Extension or Modification.** When a Temporary Restraining Order is extended or modified by the entry of a decree or court order, a Notice of Extension or Modification shall be completed.

~~F.2~~ **Protective Orders.** When a court has issued a protective order prior to the filing of a Petition for Dissolution or initiation of a paternity proceeding, and a dissolution or paternity proceeding is later filed, pursuant to Ind. Code § 34-26-5-6(4), the court that issued the protective order may, on its own motion, or upon petition and order, transfer the protective order file to the court handling the dissolution or paternity case. If there is a pending family law matter, the court where the family law cause is pending shall hear the emergency protective order request, unless otherwise impractical. The Clerk shall file a new protective order proceeding in the court where the family law case is pending. An emergency request relating to a previously disposed cause involving a family with children or paternity shall be filed in the court where the case originated.

*Adopted February 4, 2002; effective March 1, 2002;*

#### ~~~8 LR49-FR00-508 ORDERS EXCLUDING A SPOUSE FROM THE RESIDENCE~~

~~A.——A request for exclusion must comply with the Indiana Trial Rules and caselaw. The court may consider any other social or economic factors including whether either party has a reasonable alternative residence pending hearing on the provisional orders. In those circumstances where the court allows a party to be heard *ex parte* on the record and finds an emergency exists justifying issuance of an eviction order, the cause shall be set for preliminary hearing within ten (10) days with notice to all parties.~~

~~B.——An order of exclusive possession of the marital residence shall be granted only upon the terms and conditions detailed in these Rules. If granted, the order shall read as follows:~~

~~The \_\_\_\_\_ is hereby restrained from entering the marital residence located at \_\_\_\_\_ and the Marion County Sheriff, Indianapolis Police Department, or other appropriate law enforcement agency shall use all reasonable force, including arrest, to remove a party from the premises upon presentation of the order.~~

*Adopted February 4, 2002; effective March 1, 2002.*

~~R-9~~ LR49-FR00-~~509-508~~ CHILD CUSTODY AND VISITATION: REFERRALS FOR



## INVESTIGATION AND REPORT

On motion of either party with the approval of the court, or on the court's own motion, contested matters involving child custody and parenting time~~visitation~~ shall be referred to the Domestic Relations Counseling Bureau or to other sources for investigation and submission of a report to the court.

**A. Domestic Relations Counseling Bureau.** The DRCB shall conduct an investigation and report to the court on all contested matters referred to its attention, including written notice to the court when the evaluation has been conducted and the anticipated date a report will be submitted. In addition, the Bureau shall file a written report to the court if an investigation or evaluation is not conducted and the reason it was not completed.

**B. Scope.** This Rule shall apply to disputes involving child custody or ~~visitation~~parenting time that may exist either before or after the entry of a Final Decree of Dissolution of Marriage or an Entry of Paternity. The parties to contested matters shall meet and cooperate with the Domestic Relations Counseling Bureau as required.

**C. Continuance.** It shall be grounds for a continuance that a court ordered custody/visitationparenting time evaluation or report has not been submitted to the court within seven ~~(7)~~ days prior to the hearing date.

**D. Admissibility.** A court ordered custody/visitationparenting time evaluation or report shall be admissible into evidence on the motion of either party without the evaluator needing to be present at the hearing. No part of this Rule is intended to supplant the right of either party to compel the attendance of the evaluator or other witnesses as set out in Indiana Trial Rule 45.

**E. Release of Custody/~~Visitation-Parenting Time~~ Evaluation or Report.** Upon written request, a court ordered custody/visitationparenting time evaluation or report, that was submitted only to the Court may be released to all parties.

**F. Physical and Mental Examinations.** In all contested family law matters involving child custody or ~~visitation~~parenting time, the provisions of Indiana Trial Rule 35 providing for physical or mental examinations by a physician shall be extended to include examinations and evaluations by a psychologist, therapist or other qualified evaluator upon order of the court.

**G. Non disclosure of Report.** Regardless of whether or not the evaluation/report was court-ordered, was conducted by the DRCB, or was a private evaluation, the content of the evaluation/ report shall not be discussed with or in the presence of any minor child of the parties. *Violation of this rule may result in a contempt of court proceeding. This provision regarding contempt applies even if the information is not provided to the minor child directly by the party, if the party has allowed, directly or indirectly, any other individual to have access to the evaluation/report, and that individual then discusses the matter with the child.*

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**~~RULE 10~~ LR49-FR00-~~510~~509. ATTORNEY FEES**

**A. Preliminary Attorney Fees.** Attorney fees may be awarded based on evidence presented by

affidavit or oral testimony at a preliminary hearing. Affidavits shall be admissible subject to cross-examination. The following factors may be considered:

1. The number and the complexity of the issues;
2. The nature and extent of discovery;
3. The time reasonably necessary for the preparation and conduct of contested hearings;
- ~~4.~~ The attorney's hourly rate; and
5. The amount counsel has received from all sources.

**B. Preliminary Appraisal and Accountant Fees.** Appraisal or accounting fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. The following factors may be considered:

1. An itemized list of property to be appraised or valued; and
2. An estimate of the cost of the appraisals and the retainer required

**C. Contempt Citation Attorney Fees.** There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit the requested fee by affidavit or oral testimony, which may be accompanied by an itemized statement.

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**~~RULE 11~~ LR49-FR00-~~511~~510. PARENTING TIME ORDERS**

**A. Reasonable Parenting Time.** Except for specific deviations as approved by the Court, the phrase “reasonable parenting time” shall be presumed to be those rights and obligations provided for in the Indiana Parenting Time Guidelines, including the commentary, ~~as set forth in Appendix F~~, in effect at the time of the court-approved agreement or order, unless the agreement or order provides that parenting time shall be according to the guidelines as amended from time to time.

**B. Reasonable Visitation.** For cases involving visitation orders entered prior to March 31, 2001, and not modified thereafter, unless otherwise defined by court-approved agreement or order, the phrase “reasonable visitation” shall be defined as those rights and obligations provided for in the Marion County Visitation Guidelines, in their entirety, including the commentary, in effect at the time of the court-approved agreement or order, unless the agreement or order provides that visitation shall be according to the Guidelines as amended from time to time.

**C. Acknowledgment.** ——— If the parties acknowledge in writing that they have received a copy of the Indian Parenting Time Guidelines and adopt the Guidelines as written or otherwise explain any deviation from the Guidelines in a settlement agreement or final decree, it will not be necessary that a copy of the Guidelines be attached to the agreement or decree.

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**~~RULE 12~~ LR49-FR00-~~512~~511. CASE MANAGEMENT CONFERENCES**

A case management conference shall be held in every contested family law matter requiring one day or more of trial time, or as ordered by the Court. Marion Circuit and Superior Court Civil Division Rule 16.1 shall apply in all respects. In addition, the case management order shall set forth stipulated and contested issues to be considered. The joint case management order shall be submitted at least 60 days prior to the hearing, unless an extension is granted after request by the parties. If there is no case management order timely filed, the hearing may be vacated by the Court

*Adopted February 4, 2002; effective March 1, 2002.*

**~~RULE 13~~<sup>3</sup> LR49-FR00-~~513~~512. TERMINATION OF REPRESENTATIVE CAPACITY**

**A.** Upon the entry of a Final Decree of Dissolution of Marriage, Legal Separation or Paternity Judgment or a permanent modification of any custody, support or parenting time order, or the expiration of the appeal time thereon, all attorneys shall terminate their representative capacity by filing a Motion to Withdraw pursuant to Marion County Local Rule 2.

**B.** Service of process of any post dissolution [or paternity decree](#) pleadings shall be made upon the party pursuant to Indiana Rules of Trial Procedure.

**C.** Any copy served upon prior counsel [who has properly withdrawn in compliance with this Rule](#), shall be deemed to be a matter of professional courtesy only.

**D.**<sup>4</sup> Counsel for both initiating and responding parties shall be required to file a new appearance in any post dissolution [or paternity decree](#) action.

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<sup>3</sup> Amended 9/20/2004; Effective 1/1/2005

<sup>4</sup> 13(d) Adopted 9/20/2004; Effective 1/1/2005